

**NSW Department of Justice  
Liquor & Gaming NSW**

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**APPLICATION NO:** 1-4956176622

**APPLICATION FOR:** Liquor – removal of an on-premises liquor licence for a restaurant with a primary service authorisation.

**TRADING HOURS:**  
**Restaurant:**  
Monday – Saturday: 10:00 AM – 10:30 PM  
Sunday: 10:00 AM – 9:30 PM  
**Primary service authorisation:**  
Monday – Saturday: 10:00 AM – 10:30 PM  
Sunday: 10:00 AM – 9:30 PM

**APPLICANT:** Tobie Mason

**LICENCE NAME:** Orient Point Bakehouse

**LICENCE NUMBER:** LIQO660032142

**PREMISES ADDRESS:** 10 Fairlands Street  
CULBURRA BEACH NSW 2540

**ISSUE:** Whether a delegated Liquor & Gaming employee on behalf of the Independent Liquor & Gaming Authority (ILGA) should grant or refuse an application for the removal of on-premises liquor licence with primary service authorisation

**LEGISLATION** Section 59 of the *Liquor Act 2007*

**ILGA DELEGATED DECISION – APPLICATION FOR THE REMOVAL OF AN ON-  
PREMISES LIQUOR LICENCE FOR A RESTAURANT WITH A PRIMARY  
SERVICE AUTHORISATION**

**ORIENT POINT BAKEHOUSE**

Under delegation issued by the Independent Liquor and Gaming Authority under section 13 of the *Gaming and Liquor Administration Act 2007*, a designated Public Service employee or other Public Service employee of Liquor & Gaming NSW in the Department of Justice, has decided to grant the application for the removal of an on-premises liquor licence for a restaurant with a primary service authorisation, 1-4956176622.

On 13 December 2016, and after careful consideration of the application and other material, the delegate decided to approve the application, subject to the following conditions:

**Conditions imposed:**

1. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Consumption on premises (Restaurant)

Good Friday	Normal trading
Christmas Day	Normal trading
December 31st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later
3. The premises is to operate with its principal business being that of a restaurant as defined by the Liquor Act and not as a bar.
4. The licensee must ensure that no shots, shooters or slammers are served to any patron at any time.
5. The licensee or its representative must join and be an active participant in the local liquor accord.
6. The premises are to be operated at all times in accordance with the Plan of Management dated December 2016 as may be varied from time to time after consultation with the Local Area Commander.

## STATEMENT OF REASONS

### 1. Material before the ILGA delegate

The decision made by the delegate was based on the application and other relevant material, as follows:

- (1) Licence document for LIQO660032142 Orient Point Bakehouse dated 30 November 2016
- (2) On-premises licence – removal application form lodged 23 September 2016 (DOC16/110818)
- (3) Primary service authorisation application form lodged 23 September 2016 (DOC16/167156)
- (4) Category A Community Impact Statement dated 11 July 2016 (DOC16/110819)
- (5) Plan of Management dated December 2016 (DOC16/163963)
- (6) Plan of the proposed licensed area (DOC16/110814)
- (7) Submission from Shoalhaven City Council received 3 August 2016 (DOC16/163897)
- (8) DA16/1826 granted by Shoalhaven City Council on 4 October 2016 (DOC16/166998)
- (9) Certificate of advertising dated 1 December 2016 (DOC16/166991)
- (10) Email correspondence between the applicant and Liquor & Gaming NSW requesting and providing further information and consenting to the imposition of the proposed conditions, dated 30 November 2016 and 1 December 2016 (DOC16/163927 and DOC16/165381)

### 2. Legislative framework, statutory objects and considerations

In determining the application, the delegate has considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which state:

#### **3 Objects of Act**

- (1) The objects of this Act are as follows:
  - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,

- (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
- (a) the need to minimise harm associated with misuse and abuse of liquor (including the harm arising from violence and other anti-social behaviour),
  - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

### 3. Statutory tests

- (1) According to section 59(3) of the *Liquor Act 2007*, “an application for approval to remove a licence to other premises is to be dealt with and determined by the Authority as if it were an application for the granting of a licence in respect of those other premises”.
- (2) In determining an application for a licence, under section 45(3) of the *Liquor Act 2007*, the delegate must also be satisfied that:
- a. the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates,
  - b. practices will be in place as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises and that those practices will remain in place, and
  - c. if development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 4.1 Div 4.1 and Part 5.1 of that Act is required), to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.

### 4. Community Impact Test

- (1) Under section 48(5) of the *Liquor Act 2007*, the delegate must not grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regards to the Community Impact Statement, where required, and any other matter the delegate is made aware of during the

Application process, that the overall impact of the licence, authorisation or approval in question being granted will not be detrimental to the local or broader community.

- (2) The test applying under section 48(5) relates to delegated decisions in relation to:
  - a. the grant or removal of a small bar licence (where required),
  - b. a packaged liquor licence (limited to telephone/internet sales),
  - c. an application for extended trading hours to permit the sale of liquor after midnight in relation to a small bar (where required), an on premises relating to a restaurant that includes an application for a primary service authorisation, an on premises licence relating to a karaoke bar, a catering service or a vessel, and an application for a producer/wholesaler licence that includes an application for a drink on premises authorisation.
- (3) The Community Impact Statement provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.
- (4) Local and Broader Community - for the purposes of this decision, the delegate is satisfied that the relevant "Local Community" is the community within the suburb of Culburra Beach and the "Broader Community", Shoalhaven LGA.

## **5. Analysis of Submissions and other Materials**

- (1) Having reviewed all of the material, I am satisfied that this application for the removal of an on-premises licence for a restaurant with a primary service authorisation is unlikely to result in any significant increase in alcohol-related harms in the Local Community.
- (2) The licence has been operating at another address in a neighbouring suburb since it was granted in 2014. The licensee is an experienced operator of an on-premises licence with primary service authorisation.
- (3) The proposed licensed premises is to operate as a genuine restaurant.
- (4) Prior to DA16/1826 being granted, a submission was received from Shoalhaven City Council advising that it could not support the application whilst the DA remained pending. Development consent has since been issued.
- (5) No other submissions were received.

- (6) Upon removal the licence will be exercised in accordance with a Plan of Management that details measures to be employed to ensure the responsible service of alcohol.
- (7) I am satisfied that the statutory advertising requirements have been met.

## **6. Overall social impact**

### **(1) Positive benefits**

A number of conditions have been imposed on the licence. Upon removal the licence will be operated in accordance with harm minimisation measures prescribed by those conditions and outlined in the Plan of Management provided by the applicant.

### **(2) Negative impacts**

The only concerns raised in respect of this application have been resolved by way of the granting of DA16/1826.

## **7. Conclusion**

- (1) I am satisfied that procedural fairness was afforded to the applicant and interested parties regarding the decision whether or not to grant the application, as all of those required to be notified of the application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision.
- (2) Having considered the Plan of Management and related material, under section 45(3)(b) of the Act, I am satisfied that practices will be in place at the premises as soon as the licence is granted that ensure, as far as reasonably practicable, that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.
- (3) Consistent with section 45(3)(c) of the Act requiring development consent from the local council, I am satisfied that the required development consent or approval is in force.
- (4) I am satisfied that the applicant has provided consent to imposing the conditions contained in the licence document.
- (5) In making this decision under delegation from of the Authority, all statutory objects and considerations prescribed by section 3 of the Act were considered and accordingly, I have determined to grant the on-premises licence application (for a restaurant and catering service) with a sale on other premises authorisation with conditions.

Decision Date: 13 December 2016



Joanne Zammit

Coordinator Business Licensing

Liquor & Gaming NSW

**Delegate of the Independent Liquor & Gaming Authority**



**Important Information:**

In accordance with Clause 5 of the Gaming and Liquor Administration Regulation 2008, this decision is reviewable by ILGA.

The licence applicant and persons who were required to be notified of the application and who made a submission can apply for an application for review. An application for a review must be lodged with ILGA within 28 days of the date of the publication of this decision. An application fee applies. For original applicants, the review application fee is the same as the initial application fee. For non-original applicants, the application fee is \$100.

For ILGA reviews of delegated decisions, make an application for review via the Liquor and Gaming Application Noticeboard at:

<https://www.liquorandgaming.justice.nsw.gov.au/pages/public-consultation/online-application-noticeboard/online-application-noticeboard.aspx>. The Review Application form can be accessed on line via the Application Number hyperlink.

Further information can be obtained from the Reviews page on the Liquor & Gaming website at: <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/reviews-of-decisions/reviews-of-liquor-and-gaming-decisions.aspx>